APPENDIX

No. 14663 SEPTEMBER TERM, 1964 APRIL SESSION, 1965

Appeal from the United States District Court
for the Northern District of Illinois, Eastern Division.

REPUBLIC OF IRAQ, *Plaintiff-Appellant*,

v.

THE FIRST NATIONAL BANK OF CHICAGO, *Defendant-Appellee*.

August 12, 1965

Before HASTINGS, *Chief Judge*, KNOCH and KILEY, *Circuit Judges*.

KILEY, *Circuit Judge*. By this suit the Republic of Iraq seeks a judicial declaration that decrees of the Court of Personal Affairs of Baghdad, Iraq, appointing a guardian of the persons and estates of certain minor children residing in Chicago, Illinois, and dividing the estate of the deceased father among the children and their paternal grandmother are entitled, under the principles of comity, to recognition by the Probate Court of Cook County, Illinois; and for a declaration that the assets of the children's estates are unlawfully held by the First National Bank of Chicago, guardian of the estates by appointment of the Probate Court and sole defendant here, and that the assets must be turned over to the Iraqi guardian. The district court sustained the Bank's motion to dismiss the complaint and the Republic of Iraq has appealed. We affirm.

The complaint alleges that plaintiff brings the action as a sovereign nation in behalf of itself, its Ministries of Defense and Education, the five minor children, and their paternal grandmother. Jurisdiction is alleged on the basis of diversity of citizenship under 28 U.S.C. §1332 and the Declaratory Judgment Act, 28 U.S.C. §2201. The amount of the children's estates is not alleged, but in argument to the district court the parties agreed that it is at least $400,000. The amount of the alleged claim of the Defense and Education Ministries is stated in terms of Iraqi currency, but plaintiff's counsel told the district court that it is approximately $15,000.

On September 12, 1961 Subhi Ahmad Fakhri, an Iraqi citizen and national, and his wife, a British citizen, were killed in an airplane crash near Rabat, Morocco. They left, residing in Chicago where the parents had been living since 1957 or 1958, five minor children, two of whom were born in England and three in the United States. On September 18, 1961 the Court of Personal Affairs in Baghdad appointed Colonel Jehad Ahmed Fakhri, paternal uncle of the children, guardian of their persons and estates, and the estate of Subhi Fakhri was divided into six equal shares, one each for the five children and their paternal grandmother. On September 19, 1961 the Probate Court of Cook County appointed Donn P. Hogan, maternal uncle of the children, and defendant Bank, as guardians of the estates of the children, and Suzanne M. E. Hogan, the maternal grandmother, as personal guardian. Subsequently Mr. Hogan resigned as co-guardian of the estates and was appointed co-guardian of the persons. On October 3, 1961 the Iraqi Charge d'Affaires in Washington wrote to the Judge of the Cook County Probate Court notifying him of the Iraqi decrees, but that court has proceeded without regard to the decrees.

Plaintiff also alleged that the children, under the Iraqi nationality laws, are Iraqi citizens; that Subhi Fakhri

was indebted to the Iraqi Ministries of Defense and Education for funds expended for his education; and that no notice of the Probate Court proceedings was given to Colonel Fakhri.

The district court dismissed the complaint on the ground of want of federal jurisdiction to entertain a collateral attack on the orders of the Probate Court, which the court stated were *"res judicata"*. We think the result reached by the district court was correct, but for the reasons that the complaint presents no justiciable controversy and fails to state a claim upon which relief can be granted.

In the complaint plaintiff alleges no specific basis of federal question jurisdiction, but it argued to the district court and here that a federal question is presented because of a number of treaties between the United States and the Republic of Iraq and because both nations are signatories of the United Nations Charter. Plaintiff points to no specific treaty provision, nor to any in the United Nations Charter, which would require a state court to recognize an Iraqi guardianship decree. See *Hauenstein* v. *Lynham*, 100 U.S. 483 (1879). The mere fact that plaintiff is a friendly sovereign nation with treaty relationships with the United States does not make the claim one arising under the treaties of the United States for the purpose of 28 U.S.C. §1331. The sole basis of the district court's jurisdiction, therefore, was diversity of citizenship between the Republic of Iraq and the Bank, an Illinois corporation, and substantive questions presented must be governed by Illinois law. *Erie R. Co.* v. *Tompkins*, 304 U.S. 64 (1938).

The judicial power of the United States extends only to "cases and controversies". U.S. CONST., Art. III, Sec. 2. Federal courts are empowered to adjudicate claims only at the instance of one who can assert a personal, immediate and substantial interest in the matter presented to the court; and the claim must be against a party against whom

the requested relief can be granted. *Aetna Life Ins. Co.* v. *Haworth*, 300 U.S. 216, 240-41 (1937); *Lebowich* v. *O'Connor*, 309 F.2d 111, 114 (1962).

Plaintiff's first prayer for relief is for a declaratory judgment that the decrees of the Court of Personal Affairs of Baghdad are entitled to comity and must be given full faith and credit by the Cook County Probate Court. The district court has no probate jurisdiction, *Markham* v. *Allen*, 326 U.S. 490, 494 (1945); *Sutton* v. *English*, 246 U.S. 199, 205 (1918), and no power to order the Probate Court of Cook County, even if that court or a judge thereof were a party to this suit, to recognize and give effect to a foreign decree, the effect of which would be to remove control of the entire matter from the jurisdiction of the Probate Court. The authority of the district court under its diversity jurisdiction is limited to rendering judgments *in personam* against executors, administrators, guardians and other representatives. *Commonwealth Trust Co. of Pittsburgh* v. *Bradford*, 297 U.S. 613, 618 (1936). It may not render any judgment which would interfere with the possession and control of property under administration by the Probate Court. *Princess Lida of Thurn and Taxis* v. *Thompson*, 305 U.S. 456, 466-68 (1939); *United States* v. *Bank of New York & Trust Co.*, 296 U.S. 459, 477-79 (1936); *Waterman* v. *Canal-Louisiana Bank and Trust Co.*, 215 U.S. 33, 43-46 (1909); *Byers* v. *McAuley*, 149 U.S. 608, 615-19 (1893); *Galleher* v. *Grant*, 160 F. Supp. 88 (N.D. Ill. 1958).

In its own behalf the Republic of Iraq alleges that Subhi Fakhri was indebted to it for amounts expended by it for his education. No prayer for relief is made with respect to this claim, and none could properly be made against the Bank, the sole defendant here, as guardian of the estates of the children. In the complaint plaintiff "asserts its right as a sovereign nation to recover from the estate of the deceased Iraqi citizen these sums of money in accord-

ance with applicable Iraqi law." Such a claim should be brought against the representative of the estate of the alleged debtor, not the guardian of the estates of the children. If the time for filing such claims against the representative of the estate has elapsed, the federal court is bound by the state law. *Sutton* v. *English*, 246 U.S. 199, 205-207 (1918); *Security Trust Co.* v. *Black River Nat'l Bk.*, 187 U.S. 211, 227 (1902).

The complaint also asserts that it is brought in behalf of the mother of Subhi Fakhri to obtain the one-sixth share of his estate awarded to her by the Iraqi decree. This claim too is not properly brought against the Bank as guardian of the children's estates.

Plaintiff's principal claim is brought in behalf of the children to assert the claim of each to one-sixth of the father's estate pursuant to one of the Iraqi decrees and to have Colonel Fakhri recognized as guardian of their persons and estates. As to the claims for shares of that estate and the appointment of the personal guardian, again the claims are not properly brought against the Bank.

A further fundamental objection to the plaintiff's assertion of the claims of the mother and the children is its lack of standing to assert these claims. Federal courts will not entertain a suit at the instance of the United States if the suit is in reality one between private individuals. *United States* v. *San Jacinto Tin Co.*, 125 U.S. 273, 286 (1888); *accord United States* v. *Minnesota*, 270 U.S. 181, 193 (1926); *In re Debs*, 1258 U.S. 564, 586 (1895); *United States* v. *American Bell Telephone Co.*, 128 U.S. 315, 367 (1888). We think the same rule applies in the case of a foreign nation. If a sovereign nation chooses to assert against a foreign nation private claims of its individual citizens it does so as sovereign *vis-a-vis* the foreign nation, not as a private litigant. *United States* v. *Dickelman*, 92 U.S. 520, 524 (1875). Cases dealing with the assertion

by States of rights of their citizens under the original jurisdiction of the United States, *e.g. New Hampshire* v. *Louisiana: New York* v. *Louisiana,* 108 U.S. 76, 90-91 (1883); *Oklahoma* v. *Cook,* 304 U.S. 387 (1938); *Missouri* v. *Illinois and the Sanitary District of Chicago,* 180 U.S. 208 (1901), illustrate the type of interest which a government must show in order to be entitled to maintain an action in its own name—an interest which the Republic of Iraq does not possess in this case.

In all the decisions to which we have just referred it is either expressed or implied that this interest or duty of the United States must exist as the foundation of the right of action. Of course this interest must be made to appear in the progress of the proceedings, either by pleading or evidence, and if there is a want of it, and the fact is manifest that the suit has actually been brought for the benefit of some third person, and that no obligation to the general public exists which requires the United States to bring it, then the suit must fail.

The complaint in alleging that the Probate Court of Cook County must recognize a guardianship decree of an Iraqi court concerning children residing in Cook County also fails to state a claim upon which relief can be granted under Illinois law. Regardless of the domicile or nationality of the child, the courts of Illinois have jurisdiction over the guardianship of a child within the state and are not required under the principles of comity or full faith and credit to recognize guardianship decrees of a foreign state with respect to such a child. *People* v. *Wingate,* 376 Ill. 244, 33 N.E. 2d 467 (1941); *Winslow* v. *Lewis,* 15 Ill. App. 2d 65, 144 N.E. 2d 782 (1957).

While a foreign guardianship decree may be evidence to be considered on the question whether it will be recognized as a matter of comity, we think that in this case, where the children have never been in Iraq and were residing in Chicago with their parents since 1957 or 1958, it is clear that the courts of Illinois would not recognize the

Iraqi decrees, and that these principles apply with equal, if not greater, force to the question of the guardianship of estates located in Illinois.

The judgment of the district court dismissing the complaint is affirmed.

A true Copy:
Teste:

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Clerk of the United States Court of Appeals for the Seventh Circuit.

REPUBLIC OF IRAQ
CITY OF BAGHDAD

EMBASSY OF THE UNITED STATES OF AMERICA, ss:

I, Willard B. Devlin, Consul of the United States of America at Baghdad, Iraq, duly commissioned and qualified, do hereby certify that Khalil Ibrahim Hamdi, whose true signature and official seal of the Ministry of Foreign Affairs are, respectively, subscribed and affixed to the annexed document, was on the twenty-fifth day of June, 1964, the date thereof, the official authorized to authenticate official certificates and documents, to whose official acts faith and credit are due.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the seal of the Consular Service of the United States of America, Baghdad, Iraq, this twenty-seventh day of June, 1964.

WILLARD B. DEVLIN
Counsel of the United States of America

THE REPUBLIC OF IRAQ

Ministry of Justice
Correspondence Section

No. G/39/754.

Date: 16-6-1964.

IN THE NAME OF GOD, THE MERCIFUL, THE COMPASSIONATE

To Whom It May Concern

Subject—Certificate

On the request of Brigadier General Engineer Mr. JEHAD AHMAD FAKHRI, the Ministry of Justice of the Iraq Republic confirm the following information:

1. That the Qadhis in the Iraq Courts are official judges as any other judge in the Iraq Republic, and they preside over courts that have authority and jurisdiction over the personal status affairs of the individuals residing or come under the jurisdiction of these courts. The judgments and decisions of these courts in such affairs are passed according to the laws of personal status and the laws of judicial procedures which are in force in Iraq.

2. That the authority and jurisdiction of these courts, according to the law, include dealing and passing judicial judgements and decisions regarding the affairs of the persons deceased and their estates, and determining the heirs who should have their shares and the amount of shares in the estates. Furthermore, the aforesaid courts are also authorised to nominate the guardians over those heirs who are still minors. All such authority and jurisdiction are being practised by passing judicial decisions and judgements under the Law and are to be enforced.

3. That the two decisions passed by the Qadhi of Baghdad, (viz. the Judge of the judicial court which is legally

authorised with the affairs of the persons deceased and their estates as aforesaid), i.e.: the first: dated 18th, September 1961, No. 472, regarding the determination of the heirs who should have shares in the estate of late Subhi Ahmad Fakhri; the other: dated 18th, September 1961, No. 609, regarding the nomination of Mr. Jehad Ahmad Fakhri as a guardian over his brothers' minor children heirs, Amal, Ahmad Fakhri, Samiramis, Omar and Azza, that these two decisions were duely and legally passed according to the Laws in force in Iraq within the legal authority and jurisdiction of the said court.

Signed/Salem Al Mudallal
For/Minister of Justice

I, Mohammad Hamid El-Kindi, First Notary Public of Baghdad South, Iraq, certify that this is the translation of the attached document, translated from Arabic into English by Mr. Abdul Jabbar Al Jaddou, which translation, in my belief, is correct, and after taking the oath of the translator for the correctness of the translation, a copy of same has been kept and certified in this office.

First Notary
Public, Baghdad, Iraq

REPUBLIC OF IRAQ
CITY OF BAGHDAD

EMBASSY OF THE UNITED STATES OF AMERICA, ss:

I, Arthur M. Niner, Jr., Vice Consul of the United States of America at Baghdad, Iraq, duly commissioned and qualified, do hereby certify that Tawfiq Abdul-Jabbar, whose true signature and official seal of the Ministry of Foreign Affairs are, respectively, subscribed and affixed to the annexed certificate (document), was on the second day of September, 1963, the date thereof, the official authorized to authenticate official certificates and documents, to whose official acts faith and credit are due.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the seal of the Consular Service of the United States of America, Baghdad, Iraq, this third day of September, 1963.

ARTHUR M. NINER, JR.
Vice Consul of the United States of America

Subhi Ahmad Fakhri from the Quarter of Bab Al Sheikh, second section of Baghdad, died on 13th September 1961, his only heirs are his mother: Nouriah daugher of Allah Werdy and his minor children Amal, Ahmad Fakhri, Samiramis, Omar and Azza and that there are no other heirs as it was known from the declaration which came from the said quarter on 18th September 1961 and the information given to this Court by Abdul Kader sone of Ibrahim Al-Zahawi, from the quarter of Jadid Hassan Pasha and Haji son of Ahmad Fakhri son of Khalaf, from the Quarter of Azzat Tiwalat in the presence and request of Jihad son of Ahmad Fakhri, guardian for the said minors as per Court decree dated 18th September 1961, No. 609, and in pursuance of Iraqi Porsonal Station Law No. 188 of 1959, which was published in the Official Gazette, No. 280, dated 30th December 1959, the estate is to be divided into six shares, one to each of the heirs, namely Nouriah, Amal, Ahmad Fakhri, Samiramis, Omar and Azza, equally in pursuance of the said Law and subsequent to the request and confirmation made by the Guardian Jihad, this certificate of inheritance was issued on the 8th of Rabi Al Thani, corresponding to 18th September, 1961.

The Qadhi (Raligious Judge)
of Baghdad
Abdul Hamid Al Atrushi

I, the undersigned, Abdul Jabbar Jaddou, confirm that the above is a true translation from Arabic into English of the attached certificate of inheritance No. 472 dated 18th September 1961, regarding the shares of inheritance of the heirs of the late Subhi Ahmed Fakhri, Baghdad, the 20th September, 1961.

ABDUL JABBAR JADDOU

I, the undersigned, Naji Nassir, First Notary Public of Baghdad South, Iraq, certify the translation of the attached certificate of inheritance, which was made by Abdul Jabbar Jaddou from Arabic into English and confirm it is correct. Baghdad 20th September, 1961.

REPUBLIC OF IRAQ
CITY OF BAGHDAD

EMBASSY OF THE UNITED STATES OF AMERICA, ss:

I, Arthur M. Niner, Jr., Vice Consul of the United States of America at Baghdad, Iraq, duly commissioned and qualified, do hereby certify that Tawfiq Abdul-Jabbar, whose true signature and official seal of the Ministry of Foreign Affairs are, respectively, subscribed and affixed to the annexed certificate (document), was on the second day of September, 1963, the date hereof, the official authorized to authenticate official certificates and documents, to whose official acts faith and credit are due.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the seal of the Consular Service of the United States of America, Baghdad, Iraq, this third day of September, 1963.

ARTHUR M. NINER, JR.
Vice Consul of the United States of America

We learned from the declaration received from the Mukhtar and elders of Karradah Sharqiyah quarter, dated 17th September 1961, that Mr. Subhi Ahmad Fakhri and his wife Suki were killed in a plane accident leaving their minor children Amal, Ahmed Fakhri, Samiramis, Omar and Azza without guardian or trustee who manages their affairs, and preserve their properties (belongings) and whereas Mr. Jihad Ahmad Fakhri is alive and he is the uncle of the said minors, of good character and reputation and is suitable to be guardian for his brother's minor children and as he attended and accepted the guardians consequently it was agreed by this Court to appoint Mr. Jihad Ahmad Fakhri guardian for the minor children of his brother, namely Amal, Ahmad Fakhri, Samiramis, Omar and Azza until they attain majority and he was directed to fear Almighty God and provided that he does not sell or mortgage their properties without a Court's permission, and at the request, it was registered on 18th September, 1961.

The Qadhi (Religious Judge)
of Baghdad
Abdul Hamid Al Atrushi

I, the undersigned, Abdul Jabbar Jaddou, confirm that the above is a true translation from Arabic into English of the attached decree, No. 609 dated 18th September 1961, appointing Mr. Jihad Ahmad Fakhri guardian for his brother's minor children.

Baghdad, 20th September, 1961.
Abdul Jabbar Jaddou

I, the undersigned, Naji Nassir, First Notary Public of Baghdad South, Iraq, certify the translation of the attached decree of guardianship, which was made by Abdul Jabbar Jaddou from Arabic into English and confirm it is correct.

Baghdad, 20th September, 1961.

EMBASSY OF
THE REPUBLIC OF IRAQ
1801 P Street, N.W.
Washington, D. C. 20036

January 15, 1964

To Whom It May Concern:

The Kadhi Court of Baghdad (Court of Personal Affairs of Baghdad) is the official judicial body under the laws of the Republic of Iraq empowered and authorized to make determinations and enter final judgement respecting the persons and the estates of Iraqi nationals and their property in Baghdad and elsewhere in the world.

It is a court of competent jurisdiction and under Iraqi law had jurisdiction of the persons and property involved in the decrees of September 18, 1961 involving the Fakhri children and estate.

All procedures respecting notice and opportunity to participate applicable under Iraqi law were followed by the court.

ALI HAIDER SULAIMAN,
Ambassador

CS:lm

October 3, 1961

Q/3/20
The Honorable
Robert J. Dunne
Judge of the Probate Court
Cook County
Chicago, Illinois

Dear Sir:

I take the liberty of sending you this letter with reference to the question of the estate and the guardianship of the children of the late Subhi A. Fakhri of 1228 Fairwell Avenue, Chicago 26, Illinois.

We understand that the case has been taken before your court and that Mr. Fakhri's mother-in-law, Mrs. Susan Hogan, has been appointed provisionally as a guardian of the children, and Mr. Donn Hogan, jointly with the First National Bank, as guardian of the estate.

This Embassy has no intention of interferring in a judgment passed by your court according to the laws and information which was available at the moment of examining this question, but I would like to supply you with the full information and background of the case and also to inform you that the family of the late Mr. Fakhri will pursue the case further to secure their rights since the decisions and measures taken were only provisional.

The late Mr. Fakhri was an Iraqi citizen and bearer of an Iraqi passport. His wife and mother of his five children, Suzy Allen Patricia Hogan, was a British subject. The first two of his children, Amal, 12 years old, a girl, and Ahmed, 9, a boy, were both born in England. Semiramis, 5, a girl, Omar, 3, a boy, and Aza, 8 months, a girl, were born in the United States.

Mr. Fakhri came to this country on an Iraqi government scholarship. Later he went into business and he had business connections in various countries in North Africa

and the Middle East besides his business in Iraq and the United States.

Mr. and Mrs. Fakhri lost their lives on September 12, 1961, on an Air France plane which crashed near Rabat, Morocco on that day, leaving behind their five children with Mrs. Fakhri's mother who happened to be in the United States for a short visit. She is Mrs. Susan Hogan and lives with her husband in Leicester, England. Mr. Fakhri's children, having been left alone after their parents' death, were placed under her guardianship provisionally, according to Your Honor's decision.

According to Iraqi nationality laws, the children of an Iraqi citizen are from birth Iraqi citizens irrespective of the place of their birth. Accordingly, the Court of Personal Affairs in Baghdad, Iraq, has appointed the children's uncle, Colonel Jihad A. Fakhri, being the closest member of the family, as a guardian of the children. The original copy of this appointment, together with an English translation, both legalized by the Embassy of the United States in Baghdad, Iraq, has been produced at the Embassy by Colonel Fakhri, who flew to the United States from Iraq upon the death of his brother.

Col. Fakhri also produced the decision of the same court as far as the estate of the late Mr. Fakhri is concerned and the distribution of the heritage according to the Iraqi personal affairs laws, both the original and translation being legalized by the American Embassy in Baghdad, Iraq.

Since it is only natural that these Iraqi children are desired to be brought up as Iraqis under the traditions and conditions of their fathers, Col. Fakhri will appeal through the regular procedure for a decision from the courts to shift the provisional guardianship from the late Mr. Fakhri's mother-in-law, who is a British subject, to himself and to take the children to Iraq.

This Embassy will naturally supply all the necessary information as far as Iraqi laws, regulations and practices are concerned whenever and if required. Meanwhile, I hasten to supply you with this preliminary information so that no final decision is taken about the guardianship of these children and the estate of the late Mr. Fakhri, particularly since Mr. Fakhri's mother, herself a widow, is still alive and according to our laws, she has a share in the heritage and her rights have to be preserved as well.

Sincerely yours,

/s/ N. Safwat
Najdat Fathi Safwat
Charge d'Affairs a.i.